

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLIFFORD F. TUTTLE, JR., §
REPRESENTATIVE OF THE ESTATE OF §
DENNIS W. TUTTLE, DECEASED, ROBERT §
TUTTLE, AND RYAN TUTTLE, §

Plaintiffs §

v. §

CITY OF HOUSTON, *et al.*, §

Defendants. §

Civil Action No. 4:21-cv-00270

AND

JOHN NICHOLAS, as temporary administrator §
of the Estate of Rhogena Nicholas and JO ANN §
NICHOLAS, individually and as an heir of the §
Estate of Rhogena Nicholas, §

Plaintiffs §

v. §

CITY OF HOUSTON, *et al.*, §

Defendants. §

Civil Action No. 4:21-cv-00272

**DEFENDANT CITY OF HOUSTON’S RESPONSE TO PLAINTIFFS’ MOTION TO
UNSEAL SUMMARY JUDGMENT RESPONSES AND EXHIBITS**

Pursuant to Federal Rule of Civil Procedure 5.2(d), Court Procedure 5(d), and the Confidentiality Order (Dkt. 106 at ¶ C-6), Defendant City of Houston¹ files this Response to Plaintiffs’ Motion to Unseal the Summary Judgment Responses and Exhibits.

¹ Throughout this motion, “City” refers to Defendant City of Houston. “Plaintiffs” collectively refers to the Nicholas Plaintiffs and the Tuttle Plaintiffs. “Nicholas Plaintiffs” refers to the current Plaintiffs in the case originally filed as 4:21-cv-00272. “Tuttle Plaintiffs” refers to the current Plaintiffs in the case originally filed as 4:21-cv-00270.

The City respectfully requests that the Court deny Plaintiffs' request for the wholesale unsealing of the Parties' summary judgment briefing and exhibits until after the trial of this matter.

Maintaining these documents under seal is appropriate for three reasons:

1. As outlined in the previously granted agreed motions to seal,² the sealed documents relate to and would potentially interfere with an ongoing criminal case. When documents contain investigative materials related to an ongoing criminal investigation, Courts can and routinely do maintain those records under seal. *See, e.g., Ambler v. Nissen*, 2023 U.S. Dist. LEXIS 115628, 2023 WL 4375008, No. 1:20-cv-1068-LY, at *6-7 (W.D. Tex. 2023) (citing *Degen v. United States*, 517 U.S. 820, 827 (1996) (a "court can exercise discretion to manage the civil litigation to avoid interference with a criminal case").
2. Plaintiffs have held dozens of press conference related to various aspects of this case. Tellingly, the subject motion to unseal the briefing was filed a mere 30 days before the then scheduled trial of this case. Plaintiffs undeniable intention in filing its Motion to Unseal was to use the sealed documents in one or more press conferences to tell their side of the story. Such action presents serious risk of impacting the potential jury in this high-profile case. This risk remains even with the recent continuance. The Court can reserve judgment related to whether these materials should remain under seal *after* the trial of this matter. However, until trial, the summary judgement briefing and exhibits should be sealed to avoid further unnecessary impact on the potential jury. *Flagg ex rel. Bond v. City of Detroit*, 268 F.R.D. 279, 295 (E.D. Mich. 2010) (finding good cause to maintain investigative files under seal given media attention).
3. The reasons outlined in Defendants Nadeem Ashraf, Cedell Lovings, Frank Medina, Oscar Pardo, Clemente Reyna, Manuel Salazar, Eric Sepolio, Thomas Wood, and Robert Gonzales's Response to Plaintiffs' Motion.

CONCLUSION

The City respectfully requests the Court deny Plaintiffs' Motion to Unseal the Summary Judgment Responses and Exhibits, as the balance weighs in favor of nondisclosure of the confidential information contained in the summary judgment briefing and confidential exhibits.

² The City incorporates these motions by reference into this Response.

Dated: November 11, 2024

Respectfully submitted:

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**ATTORNEYS FOR DEFENDANT
CITY OF HOUSTON**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent to all counsel of record on this the 11th day of November 2024, pursuant to the Federal Rules of Civil Procedure.

/s/ Alistair B. Dawson
Alistair B. Dawson